

BEFORE THE ILLINOIS COMMERCE COMMISSION

Docket No. 03-0596

**REBUTTAL TESTIMONY
OF
JAMES R. BURT**

**On Behalf Of Sprint Communications Company, L.P.
Regarding Dedicated Transport and Loops**

**SPRINT EX. 4.0
Sprint Communications Company, L.P.**

PUBLIC VERSION

February 4, 2004

ILLINOIS COMMERCE COMMISSION
DOCKET NO. 03-0596
SPRINT EX. 4.0
WITNESS BURT
DATE 2/25/04 BEFORE CLC

1 **Q-1. Please state your name, place of employment, title and business address.**

2 A-1. My name is James R. Burt. I am employed by Sprint/United Management
3 Company, an affiliate of Sprint Communications Company L.P. ("Sprint"), as
4 Director – Regulatory Policy. My business address is 6450 Sprint Parkway,
5 Overland Park, Kansas, 66251.

6
7 **Q-2. Are you the same James Burt who filed direct testimony in this proceeding**
8 **on January 14, 2004?**

9 A-2. Yes.

10

11 **Q-3. What is the purpose of your rebuttal testimony?**

12 A-3. The purpose of my testimony is to respond to the loop and dedicated transport
13 testimony filed by Illinois Commerce Commission witness Dr. Qin Liu, ICC Staff
14 Exhibit 1.0. First, I will address the transport testimony and then I will address
15 the loop testimony. In addition, I will again respond to the one dedicated
16 transport route and several customer locations in which SBC witness J. Gary
17 Smith identified Sprint as a trigger company.

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1 Q-4. Do you agree with Dr. Liu's discussion of the rules for transport triggers as
2 provided in the TRO?

3 A-4. Dr. Liu discusses the dedicated transport triggers relative to DS1, DS3 and dark
4 fiber on pages 18-20 and again on page 24 of her direct testimony, but her
5 discussion did not fully address key aspects of the applicable rules. I believe it's
6 imperative that the rules are clearly understood since the final determination of
7 whether the triggers have been met is likely to hinge on a single rule. For the sake
8 of clarity, I'd like to point out four aspects of the rules I think are very important.
9 These include 1) whether the SBC-identified provider is operationally ready to
10 use the facilities in question to provide wholesale transport along a particular
11 route, 2) whether the SBC-identified provider is willing to immediately provide
12 wholesale transport, on a widely available basis, along the particular route, 3)
13 whether the facilities of the SBC-identified provider terminate in a collocation
14 arrangement at each end of the route at the ILEC premises or a similar
15 arrangement that is not at the ILEC premises and 4) whether requesting carriers
16 are able to obtain access to the facilities of the provider's through a cross-connect
17 or similar arrangement.¹

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¹ C.F.R. § 51.319(e).

1 **Q-5. Is there another aspect of the rules related to the wholesale dark fiber trigger**
2 **that should be emphasized?**

3 A-5. Yes. C.F.R. § 51.319(e)(3)(i)(B) says that in applying the wholesale trigger for
4 dark fiber transport, the state commission may consider whether competing
5 providers have sufficient quantities of dark fiber available to satisfy current
6 demand along a route. This is an important consideration because there are limits
7 to the amount of dark fiber that may be available along any particular dedicated
8 transport route. The rules state that there must be two or more competing
9 providers not affiliated with each other or with the ILEC to satisfy this trigger.²

10 I'm not attesting or agreeing that the information provided by SBC is accurate,
11 but assuming it is, the number of CLECs operating within any given market could
12 quickly exhaust dark fiber supply if there is not enough to satisfy the demand as
13 suggested by the rule I mentioned above. In addition, on page 35 of her
14 testimony, Dr. Liu has suggested that carriers seeking dark fiber will acquire
15 excess capacity. If one combines these two ideas, it is not difficult to imagine a
16 situation where there will be no fiber available along a particular route because
17 the demand exceeds the supply. By assuming there are no limits to dark fiber
18 availability, a finding of non-impairment could result in carriers not having access
19 to dark fiber via an unbundled element or from another provider. This would be
20 contrary to the FCC's intent.

² C.F.R. § 51.319(e)(3)(B).

1 **Q-6. Why is it important to consider the rules comprehensively when determining**
2 **whether a trigger is met?**

3 **A-6.** It is critical to follow the rules defined by the FCC when answering the question
4 of impairment. The FCC consciously created slightly different tests and criteria
5 to apply to different situations in evaluating impairment. In the case of dedicated
6 transport wholesale triggers, the FCC discerned critical issues that are relevant to
7 whether a carrier's facilities should meet the dedicated transport wholesale
8 trigger. The mere existence of facilities is not important if those facilities are not
9 evaluated in the full context of the rules. For instance, the wholesale rules do not
10 permit us to assume that every carrier with facilities necessarily counts toward the
11 wholesale trigger. The ICC must determine whether a carrier's facilities are
12 actually available on a wholesale basis. If a carrier has facilities, but is not
13 willing or able to provide them to another carrier, then they certainly can't be
14 considered towards the wholesale trigger. To do so would contradict the
15 "granular analysis" dictated by the TRO.³

16

17 **Q-7. What negative consequences would result if the rules defined by the FCC**
18 **were not followed as intended?**

19 **A-7.** In the case of dedicated transport, the most obvious consequence is that routes
20 that should be available as unbundled elements would be inappropriately

³ TRO ¶ 401.

1 eliminated. This could have negative impacts on the competitiveness of any
2 particular market since carriers would not be able to find alternatives to ILEC
3 dedicated transport when no valid alternative actually exists.
4

5 **Q-8. How would you respond to Dr. Liu's suggestion on page 24 and 25 of her**
6 **transport testimony that the commission may have to make certain**
7 **assumptions in determining if triggers have been met?**

8 **A-8. While I believe I understand the context of Dr. Liu's statement, I urge the**
9 **commission to be very cautious and not rely on assumptions, in the absence of**
10 **facts, when determining if the triggers have been met. The FCC outlined very**
11 **specific rules for determining if triggers have been met for particular dedicated**
12 **transport routes and customer locations. The route-by-route and location-by-**
13 **location analysis suggests that assumptions are not appropriate. If they were, the**
14 **FCC could have made several of these determinations themselves. Instead, the**
15 **FCC delegated the specific fact finding to the states.⁴ Further, the FCC rejected**
16 **suggestions that a granular analysis can only harm competition by stating that it is**
17 **the only way to take into account the actual impairment in a market.⁵**
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⁴ TRO ¶ 396.

⁵ TRO ¶ 118.

1 Q-9. What would be an example of an assumption that could result in a trigger
2 being met when in fact, it actually hasn't?

3 A-9. On page 29 of Dr. Liu's transport testimony, she discusses the situation where a
4 competing carrier has fiber-based collocation at two SBC central offices and
5 suggests that because of this fact alone, the trigger may be met. Later in Dr. Liu's
6 testimony, page 39, she suggests that the Commission obtain the facts before
7 making a decision or whether any triggers are met. It is unclear whether she is
8 suggesting a separate or later fact-based review process from this proceeding.
9 Mistakes are likely to occur if the relevant facts are not gathered prior to making a
10 trigger decision in this proceeding. More specifically, the failure to examine the
11 characteristics of the facilities outside the collocations may lead to a flawed
12 conclusion based on an assumption.

13
14 Q-10. Would you like to provide additional information regarding the transport
15 route designated by the end office CLLIs *** *Begin Confidential Information*
16 [REDACTED] *End Confidential Information**** in which
17 Sprint is identified as a carrier meeting the self-provisioning and wholesale
18 dedicated transport triggers?

19 A-10. Yes. I have investigated this route and determined that, consistent with my direct
20 testimony, Sprint does not meet the requirements of a self-provisioning or
21 wholesale trigger company.

1. Q-11. Please describe the facilities Sprint has between *****Begin Confidential**

2 **Information** [REDACTED]

3 **End Confidential Information***?**

4 A-11. ***** Begin Confidential Information** [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 ***** End Confidential Information** Regardless,
10 this facility does not meet either of the self-provisioning or wholesale triggers.

11

12 Q-12. Please explain why you think the facilities mentioned above do not meet
13 either the self-provisioning or wholesale triggers.

14 A-12. There are several "tests" that must be looked at in order to determine if a facility
15 meets the self-provisioning or wholesale triggers for dedicated transport. In
16 Attachment JRB-1 I have identified each of these tests by unbundled element and
17 determined whether the Sprint facilities meet the tests.

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1 **Q-13. Do you agree with Dr. Liu's recommendation on page 52 of her transport**
2 **direct testimony that the Commission should make a presumption that a**
3 **competing carrier that has deployed fiber transport along a particular**
4 **transport route also has spare dark fiber?**

5 **A-13. No. As stated previously, it is inappropriate to make broad assumptions because**
6 **it may lead to inappropriate conclusions. I don't disagree with the premise of Dr.**
7 **Liu's assumption, just the application of it. The FCC designed specific tests that**
8 **must be met before there is a showing of non-impairment. Until this showing is**
9 **made, CLECs are impaired without access to unbundled dedicated transport.**

10

11 **Q-14. How would you respond to Dr. Liu's recommendation on page 52 of her**
12 **transport direct testimony that the Commission presume that a carrier that**
13 **has established fiber-based collocations at two SBC central offices is capable**
14 **of routing its traffic from one of the two SBC central offices to the other**
15 **entirely over its own facilities?**

16 **A-14. I believe there must be evidence that the CLEC has actually self-provisioned**
17 **dedicated transport between the two offices. The CLEC may be simply**
18 **backhauling traffic from loops deployed at the central offices to its switch without**
19 **actually providing dedicated transport or a need to provide dedicated transport**
20 **between the two central offices.**

21

1 Q-15. Would you like to add anything to Dr. Liu's discussion of the rules
2 pertaining to the loop triggers as provided in the TRO?

3 A-15. Yes. On page 14 and 15 of Dr. Liu's direct testimony on loops, she properly cites
4 the rules as they pertain to the facilities that count toward the wholesale trigger.
5 I'd like to point out a critical aspect of the rules pertaining to whether a competing
6 provider has access to the entire customer location. The rule specifically requires
7 that before the competitive wholesale facilities trigger for either DS1 or DS3
8 loops is met, the competing provider must have "access to the entire customer
9 location, including each individual unit within that location."⁶

10

11 Q-16. Why is access to the entire customer location, including each individual unit
12 within that location critical?

13 A-16. First and foremost, it is a requirement of the rules. Second, it is critical that a
14 competing provider have access to the entire customer location, including each
15 individual unit within that location, to enable the requesting carrier to serve any
16 enterprise customer at the location rather than a subset of customers. If the
17 competing provider has limited access to the customer location, then the
18 wholesale trigger is not met and the ILEC should continue to provide unbundled
19 access to DS1 and DS3 loops at that location.

20

⁶ C.F.R. § 51.319(a)(4)(ii)(B) and § 51.319(a)(5)(i)(B)(2).

1 **Q-17. How would you respond to Dr. Liu's assumptions regarding fiber facilities**
2 **that might lead to an inaccurate finding of non-impairment?**

3 A-17. On page 21 of Dr. Liu's direct loop testimony, she suggests that it is acceptable to
4 assume that dark fiber loop facilities exist wherever there are lit fiber loop
5 facilities. I do not agree that these broad assumptions are appropriate given the
6 necessity of completing a granular analysis for each customer location.⁷

7

8 **Q-18. Does the fact that Dr. Liu goes on to suggest on page 21 of her direct loop**
9 **testimony that the Commission gather concrete evidence to enable a factual**
10 **finding on impairment address your concerns regarding the Commission**
11 **making assumptions about the facilities that are deployed?**

12 A-18. Not entirely. I agree with Dr. Liu's recommendation that the facts be gathered,
13 but she seems to be saying that if they are not, then making the assumption is
14 acceptable. I disagree with that aspect of her position. Fulfilling its role in
15 determining impairment per the TRO is a monumental undertaking by the Illinois
16 Commerce Commission. Tremendous volumes of facts must be gathered and
17 sifted through before a granular analysis is completed. A granular finding of the
18 facts is required to disprove the national finding of impairment. I do not believe
19 that relying on assumptions meets this standard.

20

⁷ TRO ¶ 118.

1 Q-19. Dr. Liu has recommended on page 33 of her direct testimony on loops that
2 competing carriers present information regarding the 122 customer
3 locations. Would you like to provide any additional information regarding
4 the customer locations in which Sprint is identified as a self-provisioning
5 trigger company?

6 A-19. Yes. Sprint is identified in SBC's Attachment JGS-9 as a trigger carrier for
7 several customer locations. Sprint has researched these locations and has
8 determined that Sprint does not qualify as a trigger company based on the self-
9 provisioning triggers for DS3 or dark fiber as defined by the FCC. I explain why
10 I do not think Sprint is a trigger company below.

11

12 Q-20. What criteria does the FCC use to determine if a carrier is self-provisioning
13 DS3 loops?

14 A-20. The FCC trigger states that a carrier meets the self-provisioning trigger for DS3
15 loops if it has deployed its own facilities at a specific customer location or has
16 deployed DS3 facilities by attaching its own optronics to dark fiber obtained via a
17 long-term IRU and is serving customers at the location.⁸

18

⁸ C.F.R. § 51.319(a)(5)(i)(A).

1 **Q-21. Does Sprint provide DS3 loops at any of the locations identified in SBC's**
2 **Attachment JGS-9 by deploying its own facilities or by attaching its own**
3 **optronics to dark fiber obtained via a long-term IRU?**

4 **A.21. *** Begin Confidential Information** [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] **End Confidential Information *****

10

11 **Q-22. What criteria does the FCC use to determine if a carrier is self-provisioning**
12 **dark fiber loops?**

13 **A-22. The FCC trigger states that a carrier meets the self-provisioning trigger for dark**
14 **fiber loops if it has deployed its own dark fiber facilities to the customer location**
15 **or has obtained dark fiber facilities to the particular customer location via a long-**
16 **term IRU.⁹**

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18

⁹ C.F.R. § 51.319(a)(6)(i)

1 **Q-23. Does Sprint provide dark fiber loops over its own fiber facilities or via dark**
2 **fiber obtained via a long-term IRU to any of the customer locations identified**
3 **in SBC's Attachment JGS-9?**

4 **A-23. *** Begin Confidential Information** [REDACTED]
5 [REDACTED] **End Confidential**
6 **Information *****

7
8 **Q-24. Does this conclude your testimony?**

9 **A-24. Yes it does.**